

RESOLUTION

WHEREAS, the City of El Paso contemplates usage of a certain 20 acre tract of land as a City Park;

WHEREAS, this tract is intended for transfer from the El Paso Water Utilities to the City of El Paso inventory by joint resolution approved by the El Paso Water Utilities on April 14, 2004 and scheduled for action by City Council on April 20, 2004;

WHEREAS, access to this 20 acre parcel from Bear Ridge, where it abuts, is desirable and is intended to be an important access point necessary for future usage of the tract;

WHEREAS, Colony Partners, L.P. is willing to construct the necessary ROW and drainage channel structure where intersecting the 20 acre tract as part of contemplated improvements to their abutting development in consideration of the City's participation with costs incurred; and

WHEREAS, this Developer Agreement will allow improvement of Bear Ridge Drive and the drainage channel within the 20 acre tract in a more timely and cost-efficient manner that benefits both the City and Colony Partners, L.P..

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

That the Mayor be authorized to sign a Developer Agreement between Colony Partners L.P. and the City of El Paso for the construction of certain improvements to Bear Ridge Drive and the abutting drainage channel in the vicinity of a certain 20 acre parcel contemplated for use as a City park. This developer agreement is made pursuant to Section 212.071 and 212.072 of the Texas Local Government Code as well as the City of El Paso Municipal Code.

PASSED AND APPROVED this 20th day of April, 2004.

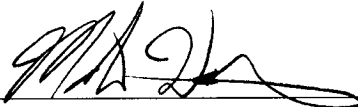
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Pat Adauto
Deputy Chief Administrative Officer for
Building & Planning Services

FRANKLIN HILLS DEVELOPER PARTICIPATION CONTRACT

This Franklin Hills Developer Participation Contract (Contract) is made by and between the **CITY OF EL PASO**, a municipal corporation in the State of Texas (the City), and **COLONY PARTNERS, L.P.**, a Texas limited partnership (Colony) and is made pursuant to Section 212.071 and 212.072 of the Texas Local Government Code and Sections 19.28.030 and 19.28.040 of the El Paso Municipal Code.

STATEMENTS OF FACT

1. Colony is the developer for the subdivision plat known as Franklin Hills Unit Four in El Paso, Texas which plat includes a portion of Bear Ridge Drive, and is the developer for the subdivision plat known as Franklin Hills Unit Six in El Paso, Texas which subdivision plat includes the remainder of Bear Ridge Drive and all of the drainage channel parallel to Bear Ridge Drive (the Drainage Channel).

2. The City, through its water utility Public Service Board, owns a 20-acre parcel it intends to develop as a park (the City Property). The subdivision plat for Franklin Hills Unit Six includes a portion of the City Property for the extension of the Drainage Channel that parallels Bear Ridge Drive, and a portion of the City Property for the extension of Bear Ridge Drive. The configuration of the City Property and the property within Units Four and Six is shown on **Exhibit "A"**.

3. The right of way for the Drainage Channel will include a maintenance road for the City parallel to the Channel. The lineal feet of the Drainage Channel that will be located on the City Property is approximately 452 feet.

4. Bear Ridge Drive is a collector arterial with a 64 foot right of way. The frontage that the City has on Bear Ridge Drive is approximately 452 feet.

5. Colony will be developing Bear Ridge Drive and the Drainage Channel on its own property, and has made an offer of dedication of same for public use on the approved plats for Franklin Hills Units #4 and #6. The City desires to have Colony also construct Bear Ridge Drive and the Drainage Channel on the City Property substantially as shown on **Exhibit "B"** attached.

6. This Contract will allow improvement of the Drainage Channel and Bear Ridge Drive in a more timely and cost-efficient manner that benefits both Colony and the City, and that complies with statutory percentage limits on municipal participation under a developer participation contract.

AGREEMENTS OF THE PARTIES

7. Right of Way. Colony agrees to execute the subdivision plats for Franklin Hills Unit Four and Six that includes the offer of dedication of its property for the Bear Ridge Drive and Drainage Channel right of ways, and the City agrees to execute the subdivision plat for Franklin Hills Units Four and Six that includes the dedication of its property for the Bear Ridge Road and the Drainage Channel right of ways.

8. Design of Road and Drainage Channel. Colony's engineers will prepare the design for Bear Ridge Drive and the Drainage Channel and all improvements within the Colony property offered for dedication and that of the City as per the Franklin Hills Unit #4 and #6 subdivisions (collectively the Improvements), in accordance with City standards, and will submit same to the City Engineer for approval.

9. Construction of the Improvements. The Improvements will be constructed within two years from the filing of the respective Subdivision Plats for Units Four and Six. Upon completion of the construction of the Improvements by Colony, Colony will send the City an itemized bill showing a detailed computation supporting the City's contribution agreed to herein, as further described below.

10. City's Cost. The total cost to construct the portion of Improvements located within the City's 20 acre parcel is estimated by Colony to be no less than \$240,000. Colony agrees that without approval by City Council, the City's portion of the design and construction costs of the Improvements as specified on **Exhibit "B"** attached, shall not exceed \$120,000 to include City fees for design approval, plan review, city inspections and utility inspections for the City's portion of the project (collectively the "City's Costs"). Colony further agrees that notwithstanding any of the foregoing, in no event shall the costs for which the City is billed exceed 30% of the actual costs of the Improvements.

11. Easements. The City will provide Colony with all necessary temporary construction easements to construct the Improvements.

12. Insurance. Throughout the time that the Improvements are under construction (the "Construction Period"), Colony shall have its contractor provide and keep in force, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) for personal injuries sustained by one claimant from a single occurrence, TWO MILLION DOLLARS (\$2,000,000.00) for personal injuries to more than one claimant from a single occurrence, and ONE MILLION DOLLARS (\$1,000,000.00) for property damages from a single occurrence. The City shall be provided with a copy of the policy evidencing such coverage. Such policy shall name the City as additional insured and shall be issued by an insurance company licensed to do business in Texas. Such policy shall provide for 30 days written notice to the City prior to cancellation or material alteration of the insurance coverage.

13. Indemnity and Release. **EXCEPT TO THE EXTENT OF THE CITY'S CONSTRUCTION RELATED TO THE CITY PROPERTY AND OTHER IMPROVEMENTS CARRIED OUT BY THE CITY, COLONY AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE CONSTRUCTION OF THE BEAR RIDGE ROAD AND DRAINAGE CHANNEL (FOR PURPOSES OF THIS PARAGRAPH 15 "THE COLONY CONSTRUCTION") SPECIFICALLY INCLUDING, BUT NOT LIMITED TO, CLAIMS FROM SUBCONTRACTORS, BONDING COMPANIES, EMPLOYEES OR OTHER INDIVIDUALS, FOR OBLIGATIONS ARISING FROM THE COLONY CONSTRUCTION, OR FROM ANY BREACH ON THE PART OF COLONY OF THE TERMS OF THIS CONTRACT, OR FROM ANY DAMAGE TO PROPERTY OR INJURY TO PERSON(S) ARISING FROM OR**

ALLEGEDLY ARISING FROM THE CITY'S INVOLVEMENT UNDER THIS CONTRACT.

COLONY FURTHER AGREES, WITH THE EXPRESS AUTHORITY OF ANY OTHER ENTITY OR INDIVIDUAL IN PRIVITY WITH COLONY, NOW OR IN THE PAST, THAT EXCEPT TO THE EXTENT OF THE CITY'S CONSTRUCTION RELATED TO THE CITY PROPERTY AND OTHER IMPROVEMENTS CARRIED OUT BY THE CITY, IT SHALL RELEASE AND FOREVER DISCHARGE THE CITY, ITS AGENTS, EMPLOYEES, REPRESENTATIVES, ATTORNEYS, AND ADMINISTRATORS FROM ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS, CAUSES OF ACTION OR SUITS IN EQUITY, OF ANY KIND OR NATURE, ACCRUING, WHETHER KNOWN OR UNKNOWN ON THIS DATE, FOR OR BECAUSE OF ANY MATTER OR THING DONE, OMITTED, OR SUFFERED TO BE DONE OR OMITTED IN ANY WAY DIRECTLY OR INDIRECTLY ARISING FROM THE COLONY CONSTRUCTION OF THE BEAR RIDGE ROAD, DRAINAGE CHANNEL, INCLUDING BUT NOT LIMITED TO, ATTORNEY'S FEES, COSTS OF PREPARING A CLAIM OR OTHER COSTS.

EXCEPT TO THE EXTENT OF THE CITY'S CONSTRUCTION RELATED TO THE CITY PROPERTY AND OTHER IMPROVEMENTS CARRIED OUT BY THE CITY, COLONY FURTHER EXPRESSLY AGREES TO INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS ARISING, IN WHOLE OR IN PART, FROM THE CONDUCT, ACTS OR OMISSIONS OF THE CITY, EVEN WHERE SUCH CLAIMS MAY INVOLVE NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY OR ITS OFFICERS, EMPLOYEES OR AGENTS.

14. Payment to Colony by City. The City agrees to pay Colony the City's payment of the City's Costs as defined in paragraph 10. The City agrees to pay Colony within 60 days from receipt of the itemized bill for the City's portion of Improvements.

15. Bond Required. Pursuant to §212.073 of the Texas Local Government Code, Colony, through its contractor, must provide a performance bond for Colony's portion of the Project costs to secure fulfillment of all of Colony's obligations under this Contract. The bonds will be in a form approved by the City. The bonds must be executed by a corporate surety in accordance with 2253 of the Texas Government Code. The bonds shall identify the City as Owner and Obligatee and shall bind both Colony's contractor and the Surety, their heirs, administrators, executors, successors and assignees, jointly and severally. The bonds shall expressly provide that Colony's contractor shall faithfully render performance under this Contract and shall remain in full force and effect until all requirements of the Contract have been performed to the City's satisfaction.

16. Utilities. Colony will only be required to put the utilities in Bear Ridge Road that are necessitated by and attributable to its Franklin Hills subdivisions.

17. Governing Law. All questions concerning the validity, operation, and interpretation of this Contract and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

18. Interpretation. This Contract shall be deemed to have been jointly prepared by the City and Colony, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Contract or any portion thereof.

19. Entire Contract. This Contract embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Contract. This Contract may not be modified except by an instrument in writing signed by both parties.

20. Notice. Any notice or communication required or permitted hereunder shall be given in writing and sent by (1) personal delivery, or (2) overnight delivery service with proof of delivery, or (3) United States Mail, postage prepaid, registered or certified mail, or (4) facsimile transmission addressed as follows:

The City:

City of El Paso
Engineering Department
2 Civic Center Plaza
El Paso, Texas 79901
(915) 541-4200
fax (915) 541-4441

With a copy to:

Office of the City Attorney
Attn: Matt Watson, Asst. City Attorney
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901
(915) 541-4550
fax (915) 541-4710

Colony:

Colony Partners, L.P.
4487 N. Mesa, Suite 201
El Paso, Texas 79902
Attn: Russell Hanson
(915) 533-7900, Ext. 21
fax (915) 533-7926

With a copy to:

Mrs. Risher S. Gilbert
Gilbert, Coffey & Hobson
201 E. Main, Suite 601
El Paso, Texas 79901
(915) 532-6622
fax (915) 541-6490

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or overnight delivery or, in the case of certified or registered mail, as of the date of deposit or delivery to the United States Mail in the manner provided herein, or in the case of delivery by facsimile, upon receipt of confirmation of delivery by the party sending the notice or communication. Any notice required by this Contract or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section. Either party hereto may

change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address.

Effective this ____ day of April 2004.

WITNESS THE FOLLOWING SIGNATURES:

ATTEST:

CITY OF EL PASO

Richarda Mumsen, City Clerk

Joe Wardy, Mayor

Developer:

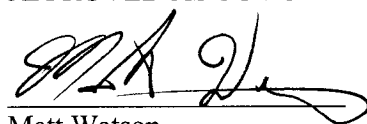
COLONY PARTNERS L.P.

By: El Paso Colony, Inc.

Its: General Partner

By: _____
Russell Hanson, President

APPROVED AS TO FORM:




Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:

Irene Ramirez
Interim Director of Engineering

Debbie Hamlyn
Deputy Chief Administrative Officer of
Quality of Life Services



Pat Adauto
Deputy Chief Administrative Officer for
Building & Planning Services

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of April 2004, by Joe Wardy, Mayor of the City of El Paso.

Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF EL PASO

This instrument is acknowledged before me on this ____ day of April 2004, by Russell Hanson as President of El Paso Colony, Inc., general partner of Colony Partners L.P., a Texas limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

List of Exhibits

1. Exhibit "A" – The Park and the Colony Property
2. Exhibit "B" – Right of way for Bear Ridge Road and the Channel

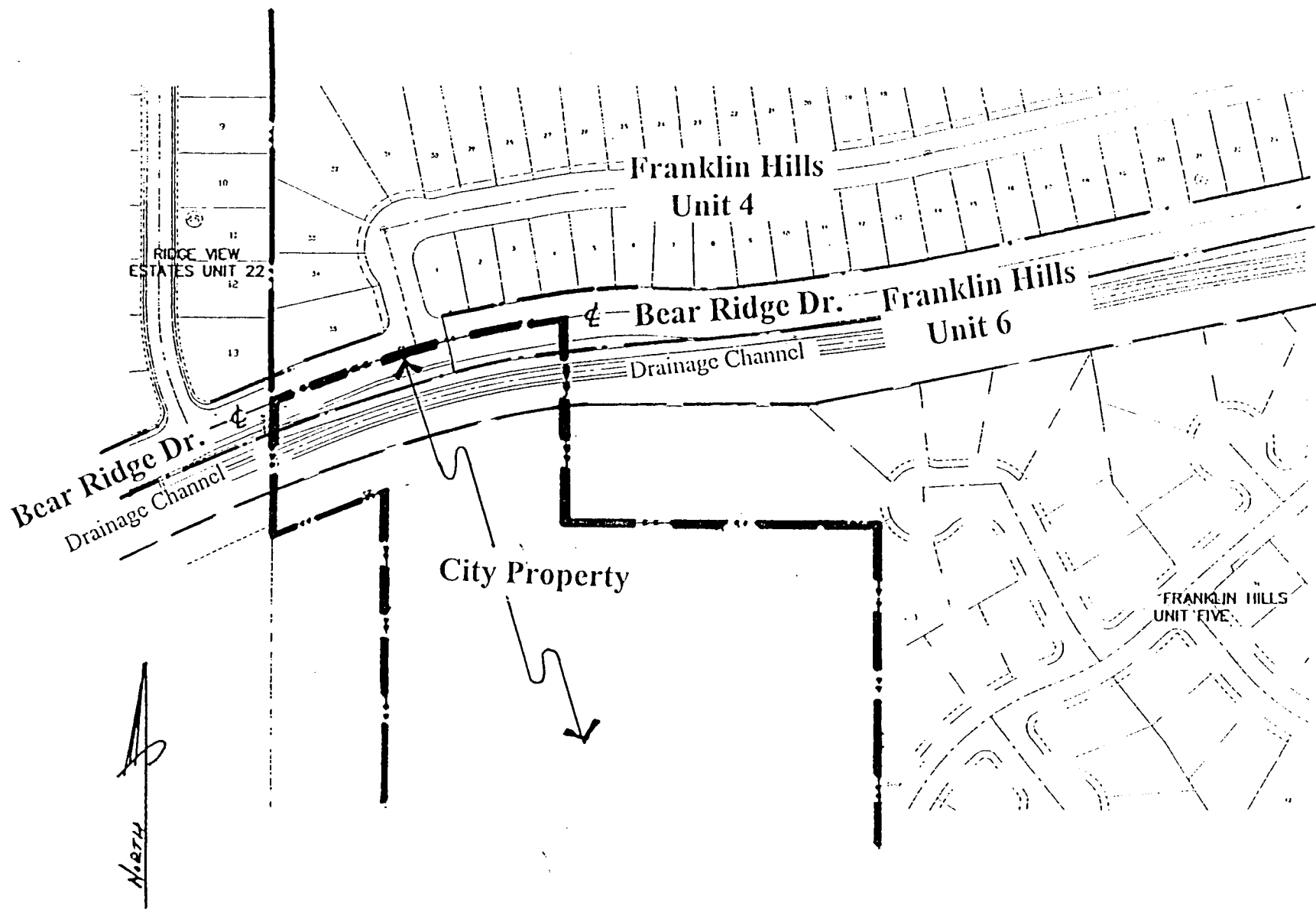


Exhibit "A"

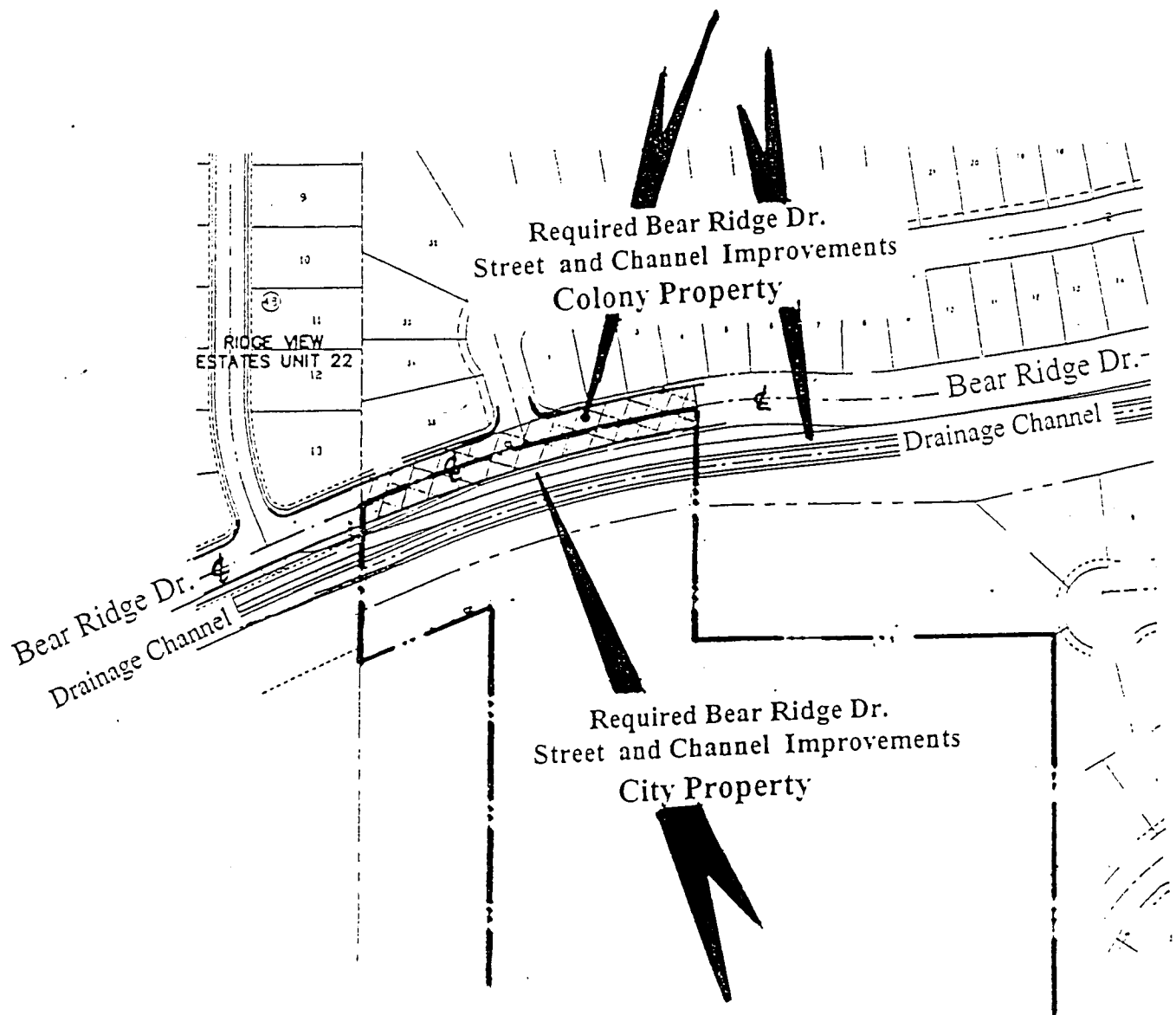


Exhibit "B"